

After giving effect to the foregoing amendment, the claims remaining in the application are 1 – 35 and 37. Original dependent Claim 36 has been cancelled and replaced by new independent claim 37. The terminology in the amended claim is substantially identical to the terminology used in the original claims.

By the foregoing amendment, the claims have been amended to overcome the rejections under 35 U.S.C. 112 set forth in paragraphs 1 – 10 of the Office Action with the exception of rejection of the terms “major proportion” and “minor proportion” set forth in paragraphs 2 and 3 thereof. More specifically, “lanolin derivative” has been replaced by “lanolin alcohol” based upon the Page 7, lines 30 – 31, of the specification wherein the usable lanolin derivatives are defined as a lanolin alcohol and an ethoxylated lanolin alcohol. Also, the term “fatty matter” has been replaced with the term “emollient material” to provide proper antecedent basis. Emollient materials are defined at page 5, line 32, to page 6, line 4, of the specification and according to page 5, lines 27 – 29, of the specification “fatty matter” is a synonym for “emollient material.” Further, the words “mildly abrasive” used in describing the claimed “particulate material” have been deleted as superfluous because the claim terminology “non-irritating, skin compatible, particulate material that is effective to cleanse and lubricate the skin without abrading the skin” fully defines the usable particulate material in accordance with the description in the specification at page 11, line 17, to page 12, line 25. For the record, the particulate material is employed in the claimed skin compositions to cleanse the skin and to exfoliate dead skin cells and the suitable particulate materials are art recognized materials that have been and are commonly used in cosmetic skin compositions containing said materials. (Note the description of particulate materials for use in cosmetic compositions disclosed in U.S. 6,042,815 of record.)

The objection in Paragraphs 2 and 3 of the above-identified Office Action to the terms “major proportion” and “minor proportion” for being vague or indefinite is not well taken. The dictionary definition of proportion is “size as related to the whole” and the dictionary definitions of “major” and “minor” are “greater in size” and “lesser in size.” Thus, the plain meaning of “major proportion” is synonymous with the definition of “majority” or “greater than one half;” and the plain meaning of “minor proportion” is synonymous with “minority” or “less than one half.” Furthermore, such terminology has been used in the claims of issued patents too numerous to require citation. The Examiner is reminded that the emollient materials are defined at page 6, line 30, to page 8, line 7, of the specification. The description further subdivides said materials into “emollient oils, emollient fatty acids, fatty alcohols and fatty esters containing a C12 – C18 acyl or alkyl group... extracts” at page 7, lines 1 – 4. Thus, claims to mixtures of “emollient oil” and an “emollient material selected from the group emollient fatty acids... fatty esters containing a C8 – C20 acyl or alkyl group” are consistent with the disclosure, including the exemplified compositions, and the addition of “major proportion” and “minor proportion” to the claim language makes the claims more definite, not “vague” or “indefinite” as asserted by the Examiner. In view of the foregoing discussion, it is clear that this ground of rejection is not in accord with 35 U.S.C. 112 and should be withdrawn by the Examiner.

Before discussing the Claim Rejections – 35 USC 102 and 35 USC 103 set forth in Paragraphs 11 – 19 of the above-identified Office Action, it is considered that a review of the claimed invention is in order. As described in generic Claim 1 the invention relates to a cosmetic composition for cleansing and conditioning the skin comprising, by weight, (A) 35 – 80% of emollient material; (B) a water-soluble surface active agent selected from the range of 0.4 – 8.0% and being effective to deposit a skin-softening amount of emollient material on the treated skin

without a greasy after-feel when used; and (C) a water-insoluble C12 – C20 monocarboxylic acid salt, with the weight ratio of emollient material to said carboxylic acid salt being in the range of 7:1 to 1:1 by weight and effective to produce a composition in the form of a substantially stable, extrudable paste or cream; said composition being effective to cleanse, soften, smooth and moisturize the skin when the composition is applied to and massaged into the skin, thereafter rinsed from the skin with tepid water and the skin is dried. In the preferred compositions, the proportion of emollient materials is 40% - 60% by weight, the surfactant is anionic and the thickening material is calcium stearate. Independent Claim 10 claims the generic composition of Claim 1 containing, in addition, 5 – 50% by weight of a non-irritating, skin compatible particulate material for enhanced cleaning. Independent Claims 16, 23 and 29 claim compositions for specific portions of the human body, e.g., hands and heels/knees/elbows and face/body containing different proportions of surfactant within the generic range.

Essential characteristics of the generic compositions follow: (1) 35 – 80% of emollient material; (2) a proportion of surfactant being selected from range of 0.4 – 8.0% by weight that is effective to deposit a skin softening amount of emollient on the treated skin without a greasy after feel when used as claimed; (3) a water-insoluble monocarboxylic acid salt in a proportion selected from the emollient material/monocarboxylic acid salt range of 7:1 to 1:1 and (4) said monocarboxylic acid salt proportion being adequate to produce a composition in the form of a substantially stable, extrudable paste or cream. The generic compositions comprise 35 – 80% by weight of emollient material and are in form of a substantially stable, extrudable cream or paste wherein the proportions of surfactant and at least 5% of a water-insoluble monocarboxylic acid salt are in specific ratio ranges to the emollient material.

The claimed invention further includes a method of cleansing and conditioning the skin on the hands, face, heels/knees/elbows and/or the body of human being comprising the steps of (1) applying the composition of Claim 1 to the specific area of body; (2) massaging the composition into said area with the hands; (3) rinsing the composition from said area with tepid water; and (4) drying said area by patting with a towel.

The rejection of Claims 1 – 6, 8 – 20, 23 – 27 and 29 - 34 “under 35 U.S.C. 102(b) as being by anticipated by Kellner et al (US Pat. 6,042,815)” in Paragraphs 12 and 13 of the Office Action is respectfully traversed because the compositions of Kellner et al are in the form of a solid stick according to column 1, lines 36 – 53, not in Applicant’s claimed extrudable paste or cream form.

More particularly, the solid compositions of Kellner et al. differ from claimed compositions in the form of an extrudable paste or cream comprising 35 – 80% by weight of emollient material, a surfactant and a water-insoluble carboxylic acid salt in specific proportions and ratios for the following reeasons:

- (1) Kellner et al discloses solid compositions preferably in the form of stick, not the Applicant’s claimed extrudable paste or cream form. See column 1, lines 36 – 53, and column 2, lines 6 – 22, of Kellner et al.
- (2) Water (an optional ingredient in the claimed compositions) is an essential ingredient in Kellner et al. compositions (see column 1, lines 36 –53, column 2, line 3 and the exemplified compositions that contain 40 – 50.4% by weight of water).
- (3) The Kellner et al. compositions are in the form of an oil and water emulsion, that is different from the claimed mixture of emollient material and surfactant thickened with the water-insoluble carboxylic acid salt.

(4) Due to the difference in form --solid versus Applicant's paste or cream--, Kellner et al does not recognize or teach Applicant's claimed criticality in the ratios of the emollient material to surfactant and to the water-insoluble monocarboxylic acid that are needed in order to form the claimed stable paste or cream compositions that are effective to cleanse, soften and smooth the skin.

Clearly, the cosmetic compositions of Kellner et al in stick form comprising a water and oil emulsion do not disclose or suggest Applicant's claimed cosmetic compositions in extrudable paste or cream form wherein up to 15% by of water is an optional ingredient..

The shortcomings of the rejection under 35 U.S.C. 102 based upon Kellner et al are further apparent from a detailed consideration of said reference. As set forth above, the Examiner has ignored or dismissed the difference in the final form of the prior art and claimed compositions--solid stick versus paste or cream--because the compositions of Kellner et al and Applicant each contain some of the same emollient materials, surfactants and water-insoluble carboxylic acid salts. However, the proportions of the common materials are different due to the difference in final form and because the cosmetic sticks of Kellner et al contain water as the principal ingredient. For example, the nine exemplified compositions of Kellner et al contain 40% to 50.4% of water and 6% to 13% of butylene glycol. For the record, the Examiner should note that butylene glycol is a water-soluble solvent according to Hackh's Chemical Dictionary and is not otherwise categorized in Kellner et al despite being present in all of the exemplified compositions. Because of the foregoing fact, the Examiner's characterization of Composition D of Kellner et al as containing 36% emollient materials is inaccurate because composition contains only 24% of emollient materials. Applicant's analysis of all of the exemplified compositions of Kellner et al. shows the percentage of emollient materials is in the range of 14% to 24% by weight when the

proportion of oil soluble emulsifier is added to the proportion of the designated emollients. Furthermore, Kellner et al teaches away from the inclusion of additional emollient material to attain Applicant's claimed 35% to 80% by weight proportion because Column 1, lines 10 – 35, teaches the replacement of wax (an oil phase gelling agent) with water to avoid a greasy feel and the replacement of other cosmetic ingredients including emollient materials with water to attain a solid stick form.

In summary, the foregoing detailed discussion of Kellner et al proves that said patent does not disclose Applicant's claimed cosmetic compositions comprising a mixture of 35% to 80% by weight of emollient materials and 0.4% - 8% surfactant thickened with the claimed proportion of at least 5% by weight of water-insoluble carboxylic acid salt in the manner required by 35 U.S.C. 102. Further, the compositions of Kellner et al contain water as a main ingredient whereas Applicant's compositions preferably are anhydrous. Finally, Kellner et al. does not teach one skilled in art how to modify the disclosed compositions to attain Applicant's claimed compositions. Thus, it is concluded that the rejection under 35 U.S.C. 102 is erroneous and must be withdrawn.

The rejection of the Claims 1 –36 in Paragraphs 13 – 19 for obviousness “under 35 U.S.C. 103(a) as being unpatentable over Puvvada (US Pat. 5,965,500) in view of Saud (US Pat. 4,704, 224) and Street (US Pat. 6,107,351)” is not well taken and respectfully traversed because there is no suggestion that said references be used in combination and further, even in unwarranted combination, said references do not disclose or suggest Applicant's claimed composition in extrudable paste or cream form. (For the record, the Office Action did not include Street in the express rejection in Paragraph 15, but Applicant assumed that it was an inadvertent

omission. If Applicant is mistaken, the Examiner is urged to correct the record herein in any subsequent Office Action.)

Puvvada discloses aqueous liquid compositions (column 1, lines 36 – 37) wherein water comprises “greater than about 30 %, preferably greater than about 40% by weight” of the composition according to column 6, lines 58 – 60, of Puvvada. The disclosed liquid compositions of Puvvada are different from Applicant’s claimed compositions in the form of an extrudable paste or cream. Further, the aqueous compositions of Puvvada containing at least 30% by weight water are unlike Applicant’s claimed compositions that are preferably anhydrous, but optionally can contain up to 15% by weight of water. (See page 12, line 32, of the Applicant’s specification.)

Notwithstanding the facts that the surfactants and emollients of Puvvada and Applicant are same and that Examples II and III of Puvvada disclose liquid compositions containing 40% by weight of emollient materials, Puvvada does not disclose or suggest any composition containing at least 5% by weight of a water-insoluble monocarboxylic acid salt as a thickener. The disclosure of zinc stearate and magnesium stearate and TiO₂ as opacifiers and pearlizers at column 7, lines 2 –3, does not remedy this shortcoming of Puvvada. Furthermore, all of the exemplified compositions of Puvvada contain more than Applicant’s claimed 0.4 – 8.0% by weight of surfactant and Puvvada does not recognize any criticality of the concentration of surfactant and the deposition of emollient material on the skin. In fact, Puvvada teaches away from such criticality because it teaches that all proportions of surfactant and emollient material are effective so long as the concentration of emollient material exceeds the concentration of surfactant. (See column 1, lines 60 – 64, of Puvvada.)

Another shortcoming of Puvvada is that Puvvada does not disclose or suggest any compositions containing at least 5% of particulate material. More particularly, the disclosure of

TiO₂ as an opacifier does not suggest inclusion of a particulate exfoliant. Also, the disclosure of sodium chloride is not helpful because said salt would dissolve in the water and could not function as a particulate exfoliant. Lastly, the disclosure “exfoliants such as polyoxyethylene beads, walnut sheets and apricot seeds” at column 7, lines 25 – 27, of Puvvada as optional ingredients without details as to particle sizes and proportions does not teach one skilled in the art to include at least 5% by weight of particulate matter in Applicant’s compositions for enhanced cleaning. In fact, it is speculated that 5% by weight of solid particulate matter in Puvvada would be precipitated in the liquid compositions of Puvvada..

Finally, although Puvvada discloses liquid compositions for skin cleaning or shower gel compositions, there is no description of Applicant’s claimed method of the cleaning the skin, particularly the steps of massaging the composition into the area of the body to be treated with the hands, rinsing the composition from the skin with tepid water and drying the treated area by patting with a towel.

In summary, the foregoing detailed discussion of Puvvada proves that the liquid aqueous compositions of Puvvada are totally different from the Applicant’s substantially anhydrous mixtures of emollient material and surfactants thickened with at least 5% by weight of a water-insoluble monocarboxylic acid salt in the form of an extrudable paste or cream. Therefore, no combination of references wherein Puvvada is the primary reference can suggest Applicant’s inventive compositions or method.

The addition of Saud to Puvvada does not remedy the shortcomings of Puvvada noted above. Saud relates to a toilet bar containing about 65% to 90% by weight of anhydrous alkali metal soap and about 0.5% to 8% by weight of a guar gum-CNFA complex according to column 2, lines 5 – 12, of Saud. The guar gum-CNFA complex provides enhanced lathering

characteristics and mildness according to column 2, lines 18 – 24, of Saud. Saud teaches at column 5, lines 21 – 68, that synthetic detergents can be included in the described soap bars and column 6, lines 1 – 10, teaches that water-insoluble soaps such as calcium stearate also can be included in the described compositions in amounts up to 30% by weight. Further, Saud teaches that use of calcium stearate is advantageous when the synthetic detergents are employed in the disclosed bars to counteract the high solubility of the synthetic detergent component. Applicant acknowledges the truth of these teachings with respect to toilet bars containing soap and synthetic detergent. However, Saud does not teach one skilled in the art that calcium stearate would function as a thickener for mixture of emollient materials and a surfactant or suggest any reason that calcium stearate would be useful in emollient skin compositions. In fact, it is not understood why one skilled in art of making emollient skin compositions would consult a reference pertaining to enhanced lathering soap-detergent bars for any purpose in the manufacture of said emollient skin compositions.

The addition of Street to the combination of Puvvada and Saud does not remedy the shortcomings of that reference combination discussed above. Street discloses and claims a cosmetic abrasive pad comprising a web of non-woven organic containing biocompatible abrasive particles, e.g., pumice, distributed therein for removing dead skin according to column 7, lines 3 to 27. The pumice is adhered to the non-woven fibers by a thermosetting resin according to column 7, lines 38 to 43, and no proportions are disclosed. Street is cited for the fact that pumice is a particulate abrasive material that may be used to exfoliate the skin. The Examiner hypothesizes that Street teaches one skilled in the art to add the pumice abrasive of Street to the liquid compositions of Puvvada. However, there is no teaching or suggestion in either Puvvada or Street to include at least 5% by weight (Applicant's minimum concentration of particulate matter in the

inventive extrudable paste or cream compositions). Furthermore, even the inclusion of 5% by weight pumice in the liquid compositions of Puvvada would not achieve Applicant's substantially anhydrous skin compositions in extrudable paste or cream form.

As set forth above, it is asserted that one skilled in art viewing the aqueous liquid detergent compositions containing 35% - 40% by weight of emollient materials disclosed by Puvvada and the soap/synthetic detergent bar compositions of Saud and the abrasive non-woven pad containing pumice of Street would not taught Applicant's substantially anhydrous skin compositions comprising a mixture of 35% to 80% emollient material and .4% to 8.0% of surfactant thickened with at least 5% by weight of water-insoluble carboxylic acid salt in the form of a substantially stable paste or cream.. The only rationale for the cited reference combination of Puvvada, Saud and Street is a 20/20 hindsight reconstruction of Applicant's invention based upon Applicant's specification. Thus, the reference combination is improper and not in accord for 35 U.S.C. 103 and the rejection based thereon must be withdrawn. Furthermore, even in unwarranted combination, the cited combination of reference does not disclose or suggest Applicant's described invention.

In summary, it is clear that the rejection herein under 35 U.S.C. 102 based upon Kellner et al. must be withdrawn because the solid cosmetic stick compositions containing water, oil and surfactant are different from and do not disclose Applicant's substantially anhydrous compositions containing different proportions of oil and surfactant thickened with a water-insoluble carboxylic acid salt in the form of an extrudable paste or cream. Further, the rejection herein under 35 U.S.C. 103 based upon the aqueous liquid detergent compositions containing 35% - 40% by weight of emollients of Puvvadad as modified by soap/synthetic detergent compositions of Saud and the pumice containing, non-woven, abrasive pad of Street is not valid for being based upon the

Examiner's 20/20 hindsight reconstruction of Applicant's invention in view of Applicant's specification. Furthermore, even in unwarranted combination, the express teachings of Puvvada, Saud and Street do not disclose or suggest Applicant's claimed, substantially anhydrous cosmetic composition in the form of an extrudable paste or cream.

In conclusion, Applicant has invented a new and useful composition for cleansing and conditioning the skin in extrudable paste or cream form that is not disclosed by Kellner et al. and that is not obvious from the combination of Puvvada, Saud and Street. Therefore, Applicant has met the requirements for the grant of patent under 35 U.S.C. 101 – 103 and early allowance of this application is respectfully solicited.

If the Examiner has any questions about this response, he is urged to make a collect telephone call to the undersigned at 1-973-338-4660.

Respectfully submitted



Richard N. Miller

